

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

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STEPHAN HARRIS, CLERK
CHEYENNE

James R. Salisbury, WY Bar #6-3072
THE SALISBURY FIRM, P.C.
P.O. Box 1617
Cheyenne, WY 82003
Telephone: (307) 634-2002
Facsimile: (307) 634-2234
Email: Jim@LawWyo.com

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

Civil Action No. 19-CV-169-F

RICHARD NELSON,)
)
Plaintiff,)
)
v.)
)
FIRST AMERICAN TITLE INSURANCE COMPANY,)
)
Defendant.)

NOTICE OF REMOVAL

COMES NOW, Defendant First American Title Insurance Company ("First American"), by and through its attorney James R. Salisbury, of The Salisbury Firm, P.C., and hereby removes Case Number 8671 from the District Court for the Sixth Judicial District, Crook County, Wyoming, to the United States District Court for the District of Wyoming, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and Local Rule 81.1, United States District Court for the District of Wyoming, and as grounds for its removal, states as follows:

A. DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(a).

1. On May 23, 2019, Plaintiff herein filed a Complaint in the District Court for the Sixth Judicial District, Crook County, Wyoming (“State District Court”) captioned *Richard Nelson v. First American Title, Inc.*¹, Docket 8671 (“State Court Action”). See Exhibit A attached hereto and incorporated herein by this reference.

2. On or about June 27, 2019, Plaintiff attempted to effectuate service on First American by serving Summons and a copy of the Complaint on the registered agent of record for First American.

3. Service of Summons and a copy of the Complaint on the registered agent of record for First American is improper pursuant to applicable Wyoming Statute. More specifically, Wyoming Statute § 26-3-121(c) provides that “[s]ervice of process against a foreign or alien insurer *shall* be made only by service thereof upon the commissioner.” Wyoming Statute § 26-3-121(c) (emphasis added). As more fully detailed below, First American is a foreign insurer, *i.e.*, an insurer formed under the laws of any jurisdiction other than the state of Wyoming. See Wyoming Statute § 26-3-102(a)(xii).

¹ The caption in the State Court Action incorrectly identified the Defendant as “First American Title, Inc.”. Defendant sought and obtained leave from the State District Court to amend the caption to reflect the proper party-in-interest, First American Title Insurance Company. A copy of the Order Amending Caption is attached hereto.

4. Following discussions with counsel for Plaintiff concerning the statutory mandate that service on a foreign insurer be effectuated on the Wyoming Insurance Commissioner rather than the registered agent of record, the undersigned executed and delivered an acceptance of service to counsel for Plaintiff on July 16, 2019. *See* Exhibit A.

5. The Complaint in the State Court Action asserts a claim against First American for breach of contract for failing to provide a defense and/or indemnify Plaintiff against a title claim which Plaintiff asserts is covered under a policy of title insurance ostensibly issued by First American.

6. In the State Court Action, Plaintiff seeks to recover damages against First American in an amount in excess of two hundred seventy thousand dollars (\$270,000.00), exclusive of costs.

7. This Court has jurisdiction over the State Court Action under 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiff and First American and more than seventy-five thousand dollars (\$75,000.00), exclusive of costs and interest, is being claimed.

8. Plaintiff alleges that Plaintiff is a resident of the state of Iowa.

9. At all times relevant to the Complaint, First American was and remains a corporation organized and existing under the laws of the state of California. First American is not a citizen of the state of Wyoming and, by definition, is a foreign insurer. *See* Wyoming Statute § 26-3-102(a)(xii).

10. Plaintiff seeks to recover from First American a sum in excess of two hundred seventy thousand dollars (\$270,000.00), which sum is well in excess of the jurisdictional threshold established in 28 U.S.C. § 1332(a).

11. Based on the complete diversity of citizenship between the parties and the amount in controversy, the requirements of 28 U.S.C. § 1332(a) have been satisfied. Removal of the State Court Action is proper.

B. PROCEDURAL REQUIREMENTS FOR REMOVAL.

12. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81.1, a true and correct copy of all process, pleadings, orders and documents from the State Court Action which have been served upon First American are being filed with this Notice of Removal. *See* Exhibit A. First American will file true and legible copies of all other documents on file in in the State Court Action within 14 days of entry of the Order of Removal.

13. This Notice of Removal has been filed within thirty (30) days of the date that First American was properly served with Summons and/or the Complaint in this matter. Removal is therefore timely in accordance with 28 U.S.C. § 1446(b).

14. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because the United States District Court for the District of Wyoming is the federal district embracing the Sixth Judicial District Court in Crook County, Wyoming, where the State Court Action was originally filed.

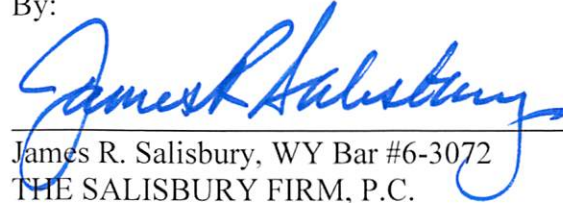
C. CONCLUSION.

By this Notice of Removal, Defendant does not waive any objections it may have as to service, jurisdiction or venue, or any other defenses or objections it may have to this action. Defendant intends no admission of fact, law or liability by this notice, and expressly reserves all defenses, motions and/or pleas.

DATED this 12th day of August, 2019.

FIRST AMERICAN TITLE INSURANCE COMPANY
Defendant

By:



James R. Salisbury, WY Bar #6-3072

THE SALISBURY FIRM, P.C.

P.O. Box 1617

Cheyenne, WY 82003

Telephone: (307) 634-2002

Facsimile: (307) 634-2234

Email: Jim@LawWyo.com

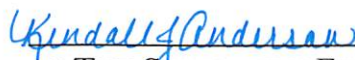
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the
12th day of August, 2019 to the following via the method indicated below:

Seth Shumaker
SETH SHUMAKER ATTORNEY AT LAW
2 North Main Street, Suite 103
Sheridan, WY 82801
SheridanWyoLaw@gmail.com
- COUNSEL FOR PLAINTIFF

☒ First Class Mail
☐ Facsimile
☐ Hand Delivery
☒ Email



OF THE SALISBURY FIRM, P.C.

EXHIBIT A

**- SUMMONS; COMPLAINT; ACCEPTANCE OF SERVICE;
ORDER AMENDING CAPTION; ORDER EXTENDING TIME FOR
DEFENDANT TO ANSWER OR OTHERWISE PLEAD
(STATE COURT ACTION) -**

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING**

**RICHARD NELSON
vs.
FIRST AMERICAN TITLE INSURANCE COMPANY**

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT WITHIN AND
FOR CROOK COUNTY, WYOMING

RICHARD NELSON,

Plaintiff,

vs.

FIRST AMERICAN TITLE, INC.,

Serve: Corporation Service Co.

1821 Logan Ave.

Cheyenne, WY 82001,

Defendant.

) Case No.: 8671

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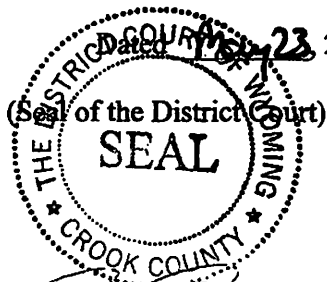
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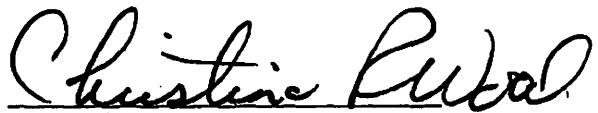
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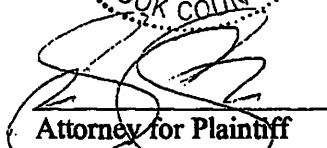
SUMMONS

To the above-Defendant: First American Title, Inc., c/o Corporation Service Company, 1821 Logan Ave., Cheyenne, Laramie County, Wyoming:

You are hereby Summoned and required to file with the clerk and serve upon the plaintiff's attorney an answer to the Complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. (If service upon you is made outside the State of Wyoming, you are required to file and serve your answer to the Complaint within 30 days after service of this summons upon you, exclusive of the day of service.) If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.




Clerk of Court


Attorney for Plaintiff
2 North Main, Ste. 103
Sheridan, WY 82801
307/675-1233
307/675-1235 (fax)

sheridanwyolaw@gmail.com

SHERIFF'S RETURN

I, _____, Sheriff/Deputy Sheriff of Laramie County, Wyoming, did on this _____ day of _____, 2019, serve upon the Defendant, First American Title, Inc., a copy of the Complaint by personally delivering the same to its registered agent, Corporation Service Company, at _____, Cheyenne, Laramie County, Wyoming.

Sheriff/Deputy

) Case No.: 8671

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MAY 23 2019

CHRISTINA R. WOOD
CLERK OF THE DISTRICT COURT
BY _____

COMES NOW the Plaintiff, Richard Nelson, and for his Complaint against
Defendant, First American Title, Inc., states:

1. Plaintiff is a resident of the State of Iowa.
2. Defendant is a duly incorporated entity doing business in the State of Wyoming and may be served by its registered agent: Corporation Service Company, 1821 Logan Ave, Cheyenne, WY 82001.
3. This cause of action arose in Crook County, Wyoming.
4. From 1978 until 2017, Plaintiff was the declared the fee simple owner pursuant to a Warranty Deed and title insurance issued by the Defendant of the following described real property located in Crook County, Wyoming:

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5. Plaintiff paid for and the Defendant accepted Plaintiff's payment for Defendant's title insurance policy and coverage of said real property described in the previous paragraph.

6. In 2012, suit was initiated by the State of Wyoming challenging Plaintiff's fee simple ownership of said real property in Crook County, Wyoming District Court Case Number 8222.

7. At the time of the initiation of said litigation by the State of Wyoming, Plaintiff informed the Defendant of this matter by and through its local agent, Linda Foster.

8. Defendant thereafter failed to provide a defense to Plaintiff in said cause of action. Subsequently, judgment was entered against the Plaintiff ejecting the Plaintiff from the described real property. Consequently, a second suit was initiated by Plaintiff's tenant seeking damages against Plaintiff as a result of the tenant's improvements he made to the premises. That suit was initiated in Crook County, Wyoming District Court, Number 8146. Again, the Plaintiff notified Defendant by and through its local agent, Ms. Foster, of this litigation. The Defendant thereafter failed to provide a defense to the Plaintiff in that matter and denied that Plaintiff had such coverage.

9. As a result of Crook County District Court Case Number 8146, judgment was entered against the Plaintiff, the real property described herein was seized pursuant to execution and the real property was sold at public auction to satisfy the judgment.

10. As a result of the Defendant's actions as described, Plaintiff was directly and proximately damaged in an amount exceeding \$270,000.00.

11. Throughout the times described herein and to the date of this Complaint, the Defendant and its agents have continued to avoid, deny and frustrate Plaintiff's efforts to confirm coverage provided by Defendant, to provide a defense to Plaintiff and to reimburse Plaintiff for his losses incurred as a result of the prior litigation as described.

12. Plaintiff is therefore entitled to judgment against the Defendant.

WHEREFORE, Plaintiff prays judgment against the Defendant in an amount which is reasonable, for costs to be assessed against the Defendant and for such other and further orders as the Court deems just and proper.

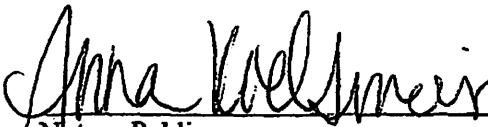
DATED this 30th day of April, 2019.


Richard Nelson, Plaintiff

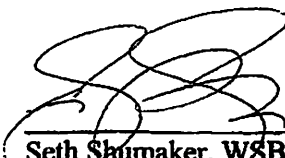
STATE OF IOWA)
) ss.
COUNTY OF Hardin)

Before me, a Notary Public, appeared Richard Nelson, to me known to be the Plaintiff in the foregoing matter and who, on this 2nd day of May, 2019, after being duly sworn, states the averments contained herein are true and correct to his best knowledge and belief at this time.




Notary Public

My commission expires:


Seth Shumaker, WSB 6-3818
2 N. Main, Ste. 103

Sheridan, WY 82801
307/675-1233
307/675-1235 (fax)
sheridanwyolaw@gmail.com
Attorney for Plaintiff

EXHIBIT A

A tract of land lying in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, Township 53 North, Range 65 West of the Sixth Principal Meridian, Crook County, Wyoming. Said tract of land being more particularly described as follows.

Beginning at a 2 $\frac{1}{2}$ " aluminum cap stamped PE&LS 2395 and marking the West $\frac{1}{16}$ corner between said Section 17 and Section 8, Township 53 North, Range 65 West, which bears N 87°49'29" E, 1336.00 feet along the North line of said Section 17 from a 2 $\frac{1}{2}$ " aluminum cap stamped PE&LS 2395 marking the Northwest corner of said Section 17, the Basis of Bearing for this description.

Thence S 00°27'47" W, 816.65 feet along the West line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$ to a 1 $\frac{1}{2}$ " aluminum cap stamped D35 and PE&LS 2395 marking the True Point of Beginning;

Thence S 00°27'47" W, 438.20 feet along the West line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$ to a point of intersection with the northern right of way of Wyoming State Highway #24;

Thence N 47°43'30" E, 296.74 feet along said right of way to a 1 $\frac{1}{2}$ " aluminum cap stamped D34 and PE&LS 2395;

Thence N 42°09'37" W, 321.84 feet to the True Point of Beginning.

Said tract of land encompasses 1.10 acres more or less.

James R. Salisbury, #6-3072
THE SALISBURY FIRM, P.C.
P.O. Box 1617
Cheyenne, WY 82003
Telephone: (307) 634-2002
Facsimile: (307) 634-2234
Email: Jim@LawWyo.com

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF CROOK, STATE OF WYOMING

Civil Action No. 8671

RICHARD NELSON,

Plaintiff,

v.

FIRST AMERICAN TITLE, INC.,

Defendant.

FILED
CROOK COUNTY

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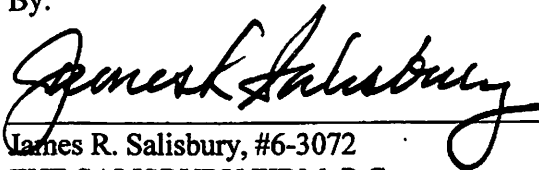
CHRISTINA R. WOOD
CLERK OF THE DISTRICT COURT
BY _____

**ACCEPTANCE OF SERVICE OF SUMMONS AND COMPLAINT
ON BEHALF OF DEFENDANT**

The undersigned, James R. Salisbury, of The Salisbury Firm, P.C., does hereby accept service of the SUMMONS and COMPLAINT on behalf of Defendant First American Title, Inc. (sic) as if the same were personally served upon such Defendant on the date of execution hereof. This acceptance does not constitute a waiver of any defenses thereto.

DATED this 16th day of July, 2019.

FIRST AMERICAN TITLE INSURANCE COMPANY
Defendant
By:



James R. Salisbury, #6-3072
THE SALISBURY FIRM, P.C.
P.O. Box 1617
Cheyenne, WY 82003
Telephone: (307) 634-2002
Facsimile: (307) 634-2234
Email: Jim@LawWyo.com
ATTORNEY FOR DEFENDANT

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

The foregoing instrument was acknowledged, subscribed and sworn to before me by James R. Salisbury, personally known to me, on this 16th day of July, 2019.

WITNESS my hand and official seal.



Kendall J. Anderson
NOTARY PUBLIC

My Commission expires: 03 Nov. 2020

James R. Salisbury, #6-3072
THE SALISBURY FIRM, P.C.
P.O. Box 1617
Cheyenne, WY 82003
Telephone: (307) 634-2002
Facsimile: (307) 634-2234
Email: Jim@LawWyo.com

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF CROOK, STATE OF WYOMING

Civil Action No. 8671

RICHARD NELSON,
Plaintiff,

v.

FIRST AMERICAN TITLE, INC.,
Defendant.

FILED
CROOK COUNTY

JUL 23 2019

CHRISTINA R. WOOD
CLERK OF THE DISTRICT COURT
BY _____

ORDER AMENDING CAPTION TO NAME PROPER PARTY-DEFENDANT

THIS MATTER, having come before the Court upon Defendant's Unopposed Motion for Leave to Amend Caption to Name Proper Party-Defendant, pursuant to Rules 10 and 15, W.R.C.P.; and the Court having reviewed the motion and pleadings on file herein, finds that good cause exists to grant the relief sought by Defendant's motion and orders as follows:

IT IS HEREBY ORDERED that Defendant's Unopposed Motion for Leave to Amend Caption to Name Proper Party-Defendant, pursuant to Rules 10 and 15, W.R.C.P., shall be and hereby is granted.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

Certificate of Clerk of the District Court. The above is a true and correct copy of the original instrument which is on file or of record in this court.

Done this 23 day July 2019

CHRISTINA R. WOOD

By Julie Altapfer Clerk
Deputy

IT IS FURTHER ORDERED that the caption of this action be and hereby is amended to read as follows:

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF CROOK, STATE OF WYOMING

Civil Action No. 8671

RICHARD NELSON,

Plaintiff,

v.

FIRST AMERICAN TITLE INSURANCE COMPANY,

Defendant.

IT IS FURTHER ORDERED that all future pleadings and other documentation filed and/or served in this matter shall reflect the caption as set forth above.

DATED this 23 day of July, 2019.

ORIGINAL SIGNED BY:

MICHAEL N. DEEGAN

HONORABLE MICHAEL N. DEEGAN
DISTRICT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was served on the 23 day of July, 2019 to the following via the method indicated below:

James R. Salisbury
THE SALISBURY FIRM, P.C.
P.O. Box 1617
Cheyenne, WY 82003
Jim@LawWyo.com

- COUNSEL FOR DEFENDANT

☒ First Class Mail
☐ Facsimile
☐ Hand Delivery
☐ Email

Seth Shumaker
SETH SHUMAKER ATTORNEY AT LAW
2 North Main Street, Suite 103
Sheridan, WY 82801
SheridanWyoLaw@gmail.com

- COUNSEL FOR PLAINTIFF

☒ First Class Mail
☐ Facsimile
☐ Hand Delivery
☐ Email

TINA WOOD, CLERK
CROOK COUNTY DISTRICT COURT
By:

Julie Altaper
CLERK/ DEPUTY CLERK

James R. Salisbury, #6-3072
THE SALISBURY FIRM, P.C.
P.O. Box 1617
Cheyenne, WY 82003
Telephone: (307) 634-2002
Facsimile: (307) 634-2234
Email: Jim@LawWyo.com

**IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF CROOK, STATE OF WYOMING**

Civil Action No. 8671

RICHARD NELSON,

Plaintiff,

v.

FIRST AMERICAN TITLE INSURANCE COMPANY,

Defendant.

FILED
CROOK COUNTY

AUG 05 2019

CHRISTINA R. WOOD
CLERK OF THE DISTRICT COURT
BY _____

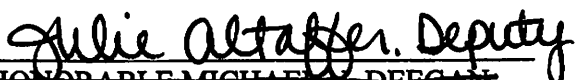
**ORDER EXTENDING TIME
FOR DEFENDANT TO ANSWER OR OTHERWISE PLEAD**

THIS MATTER having come before the Court on the request of Defendant First American Title Insurance Company for a 15-day extension of time to answer or plead to the Complaint filed herein, pursuant to Rule 6(b)(3), Wyoming Rules of Civil Procedure; and the Court having reviewed such request and pleadings on file herein, finds that just cause exists to grant such request and hereby orders as follows:

IT IS HEREBY ORDERED that the Defendant's request for a 15-day extension of time to answer or plead to the Complaint filed herein shall be and hereby is granted.

IT IS FURTHER ORDERED that Defendant shall file its Answer or other responsive pleading on or before the 20th day of August, 2019.

DATED this 5 day of August, 2019.


~~HONORABLE MICHAEL N. DEEGAN~~
~~DISTRICT JUDGE~~
CHRISTINA R. WOOD
CLERK OF DISTRICT COURT

CLERK'S CERTIFICATE OF SERVICE

5

I hereby certify that a true and correct copy of the foregoing Order was served on the day of August, 2019 to the following via the method indicated below:

James R. Salisbury
THE SALISBURY FIRM, P.C.
P.O. Box 1617
Cheyenne, WY 82003
Jim@LawWyo.com

- COUNSEL FOR DEFENDANT

☒ First Class Mail
☐ Facsimile
☐ Hand Delivery
☐ Email

Seth Shumaker
SETH SHUMAKER ATTORNEY AT LAW
2 North Main Street, Suite 103
Sheridan, WY 82801
SheridanWyoLaw@gmail.com

- COUNSEL FOR PLAINTIFF

☒ First Class Mail
☐ Facsimile
☐ Hand Delivery
☐ Email

TINA WOOD, CLERK
CROOK COUNTY DISTRICT COURT
By:



CLERK / DEPUTY CLERK